March 12, 2013

Via Electronic Filing

Marlene H. Dortch, Esq. Secretary Federal Communications Commission 445 12th Street, S.W. Washington, DC 20554

Re: Joint Applications of Sprint Nextel Corporation, SOFTBANK CORP., and

Starburst II, Inc. and Petition for Declaratory Ruling under Section 310(b)(4) of

the Communications Act of 1934, as Amended

IB Docket No. 12-343

File No. ISP-PDR-20121115-00007

Notice of Ex Parte Presentation and Written Ex Parte Presentation

Dear Ms. Dortch:

On March 8, 2013, representatives of Sprint Nextel Corporation ("Sprint"), SOFTBANK CORP. ("SoftBank"), Starburst I, Inc. ("Starburst I"), Starburst II, Inc. ("Starburst II") (collectively, the "Applicants"), and Clearwire Corporation ("Clearwire") met with Federal Communications Commission ("Commission" or "FCC") staff members regarding the above-referenced transactions. The parties discussed the issues summarized in the attached slide presentation, copies of which were distributed during the meeting.

In addition to the information provided at the meeting, SoftBank and Sprint provide a brief summary of issues in this proceeding and a brief response to new claims asserted for the first time in reply filings made by some parties.² The pleading cycle is now closed, and the record establishes that the proposed SoftBank/Sprint and Sprint/Clearwire transactions will result in significant public interest benefits and will be consistent with the Commission's policies concerning foreign ownership. None of the petitions to deny or any other submissions have provided any reason for the Commission to deny the amended applications or impose conditions on the Commission's approval.

The Transactions Promise to Invigorate Competition and Promote Mobile Broadband

A complete list of the individuals participating in the meeting is attached as an Exhibit.

DISH, Network, LLC ("DISH"), the Consortium for Public Education and the Roman Catholic Diocese of Erie, Pennsylvania (the "Consortium"), and Crest Financial Limited ("Crest") each seek to assert new issues in their reply comments. In addition to the substantive reasons why their arguments should be rejected, as described below, the Commission would be justified in striking them from the record because these parties ignored the Commission's injunction not to introduce new arguments in reply filings. See Public Notice, SoftBank and Sprint Seek FCC Consent to the Transfer of Control of Various Licenses, Leases, and Authorizations from Sprint to SoftBank, and the Grant of a Declaratory Ruling Under Section 310(b)(4) of the Communications Act, 27 FCC Rcd 14924, 14933 (2012) ("New issues may not be raised in responses or replies.").

As explained in the meeting, through the transactions, SoftBank will provide a multi-billion dollar capital infusion that will strengthen Sprint's and Clearwire's services. This capital infusion promises to accelerate and expand the mobile broadband services provided by Sprint and Clearwire. The merged companies will be able to leverage this investment and SoftBank's expertise to become stronger competitors in a wireless marketplace that is currently trending toward duopoly. SoftBank has a proven track record in successfully challenging large rivals.

The SoftBank/Sprint transaction poses no risk of competitive harm as SoftBank has no attributable interests in any U.S. wireless carriers and does not compete with Sprint in providing wireless communications services. The Sprint/Clearwire transaction similarly raises no competitive concerns. Clearwire's retail wireless business serves a very small share of U.S. wireless subscribers, and substantially all of its wholesale revenue comes through Sprint. Moreover, Sprint already owns a *de jure* controlling interest in Clearwire. Far from harming competition, the transactions offer significant benefits to U.S. consumers, as well as to Educational Broadband Service ("EBS") licensees that lease spectrum to Clearwire.

The Transactions Comply with the Commission's Foreign Ownership Policies

The Applicants demonstrated in their petition for declaratory ruling and other filings and explained during the meeting that they comply with the requirements under the Commission's *Foreign Participation Order* and are entitled to the presumption that SoftBank's investment in Sprint is in the public interest.³ Post-closing, less than 10 percent of Sprint's stock will be owned by investors from countries that are not members of the World Trade Organization ("WTO"),⁴ well under the 25 percent benchmark set forth in the *Foreign Participation Order* for applying the presumption in favor of indirect foreign investment.⁵

Clearwire does not use its spectrum to provide commercial mobile radio service ("CMRS") or other common carrier services. Consequently, Section 310(b) does not apply to the Clearwire licenses. *See* 47 U.S.C. §310(b); *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891, ¶ 97 n.192 (noting that Section 310(b) does not apply to non-common carrier, non-broadcast, non-aeronautical radio services) ("*Foreign Participation Order*").

This non-WTO ownership is widely dispersed. Only eight shareholders hold more than one percent of SoftBank shares, and several of those shareholders are nominees for large numbers of individual shareholders. Further, and consistent with Commission precedent, the Applicants are treating all ownership interests that cannot specifically be determined to be from WTO countries as if they are from non-WTO countries. As described in its Foreign Ownership Petition, SoftBank did not identify any shareholders as actually coming from non-WTO countries; all of the shares in the non-WTO category represent shareholders whose nationality could not be confirmed. *See* Petition for Declaratory Ruling, attached as Attachment 5 to Joint Applications for Consent to Transfer International and Domestic Authorization Pursuant to Section 214, at 11-12 (filed Nov. 15, 2012) ("Foreign Ownership Petition"). (Unless otherwise indicated, all comments and petitions cited herein were filed in IB Docket No. 12-343.).

See Applicants' Joint Opposition to Petitions to Deny and Reply to Comments at 19-20 (filed Feb. 12, 2013) ("Applicants' Joint Opposition to Petitions to Deny") at 19-20 (Feb. 12, 2013). Contrary to arguments of DISH, there is no precedent or public interest rationale for subjecting this level of non-WTO ownership to any greater scrutiny. Reply Comments of DISH at 33 (filed Feb. 25, 2013) ("DISH Reply).

As explained in the Applicants' Opposition, none of the petitioners or commenters provides any valid basis for rebutting this presumption. None of the arguments these parties raised in reply comments overcomes the presumption in favor of SoftBank's investment. Contrary to one party's suggestion, the SoftBank/Sprint transaction is not subject to additional scrutiny because alleged "broadcast-type services" might be offered via the spectrum acquired in these transactions. The broadcast-specific foreign ownership requirements of Section 310(b) of the Communications Act of 1934, as amended, apply only to actual broadcast services, and the services provided by the Applicants are non-broadcast. The Applicants do not disseminate radio communications on a non-subscription basis to the general public. Further, the suitability of a particular type of spectrum for a service does not affect its classification; if suitability were the standard, 700 MHz Commercial Mobile Radio Service ("CMRS") spectrum would be subject to the broadcast limitations. In addition, how customers use a service does not affect its classification, and the underlying nature of the transmission service is unaffected if customers obtain video programming from content providers.

The Commission routinely authorizes foreign ownership of CMRS licensees where, as is the case here, the Applicants have made the showing required under the Commission's rules and policies. Indeed, the Commission already has approved 100 percent foreign ownership of one large U.S. wireless provider and 45 percent foreign ownership of Verizon Wireless, one of the two largest U.S. wireless providers. Notwithstanding the arguments of some parties, ⁸ SoftBank's investment in Sprint should be treated no differently. These arguments – ranging from claims concerning spectrum aggregation and spectrum use to the Commission's 800 MHz reconfiguration plan – are meritless, irrelevant, and fall far short of demonstrating the extraordinary circumstances required to rebut the presumption in favor of investment from WTO countries.⁹

The Transactions Raise No Spectrum Aggregation Concerns

The SoftBank/Sprint and Sprint/Clearwire transactions will not increase the concentration of spectrum holdings. SoftBank owns no attributable interests in U.S. spectrum licenses or leases, and Clearwire's spectrum rights already are attributed to Sprint pursuant to a 2008 order that found that Sprint's ownership interest in Clearwire spectrum holdings serves the public

⁶ DISH Reply at 2-3.

See, e.g., 47 U.S.C. § 153(7) (broadcasting means "the dissemination of radio communications intended to be received by the public"); Loral Corporation, Memorandum Opinion and Order, 12 FCC Rcd 21164, ¶ 7 (1997); id., citing Subscription Video, 2 FCC Rcd 1001 (1987) (holding that subscription services are not broadcast services), aff'd National Association for Better Broadcasting v. FCC, 849 F.2d 665 (D.C. Cir. 1988).

⁸ DISH Reply at 3, 10.

DISH has made the same flawed and procedurally improper arguments concerning the 800 MHz reconfiguration plan and the "anti-windfall" payment issue in the Commission's 800 MHz proceeding. Comments of DISH Network Corporation, WT Docket No. 02-55 (filed Feb. 25, 2013). Sprint has responded to those arguments in that proceeding. *See* Reply Comments of Sprint Nextel Corporation, WT Docket No. 02-55 (filed Mar. 11, 2013). They are irrelevant to the instant merger review proceeding.

interest. Thus, there is no new spectrum aggregation for the Commission to analyze in this proceeding.

The arguments advanced by some parties concerning spectrum aggregation ignore this simple fact. The Commission should reject these arguments, and also reject arguments for modifying the Commission's spectrum screen in this proceeding. These proposed modifications not only lack merit, but are not transaction-specific, as the transactions do not increase the amount of spectrum already attributed to Sprint for spectrum screen and competitive analysis purposes and, thus, there is no need to evaluate them under the spectrum screen. Issues concerning the spectrum screen should be addressed in the pending mobile spectrum holdings rulemaking, where the Commission has developed a comprehensive record on the far-reaching issues raised by the Commission's spectrum aggregation policies. 13

Team Telecom Review

Contrary to the arguments of one party, there is no need for the FCC to engage in its own inquiry concerning national security issues and impose its own conditions.¹⁴ Not only is there no evidence of any national security threat that might arise from the proposed transaction, but the expert authorities on national security issues – in particular the agencies that work together in Team Telecom – already are engaged with Sprint and SoftBank on these questions. A separate Commission inquiry would be duplicative and a waste of resources, given that the Commission does not have specific expertise in these areas. It also would be unprecedented for the

See Applicants' Joint Opposition to Petitions to Deny at 24-28; Sprint Nextel Corporation and Clearwire Corporation; Applications for Consent to Transfer Control of Licenses, Leases, and Authorizations, Memorandum Opinion and Order, 23 FCC Rcd 17570 (2008), aff'd Order on Reconsideration, 27 FCC Rcd 16478 (2012). Sprint has consistently held an attributable interest in Clearwire since the release of the Commission's 2008 Order. Moreover, Clearwire's spectrum holdings have not substantially changed since that order. Although Clearwire has acquired some additional spectrum rights in some markets, the Commission has reviewed and approved those transactions and, where it was relevant, taken Sprint's attributable interest in Clearwire into account as part of its review. See, e.g., Applications of Wireless Telecommunications, Inc., Memorandum Opinion and Order, 24 FCC Rcd 3177, ¶¶ 21-24 (2009) (applying spectrum screen to Sprint in reviewing and approving Clearwire's acquisition of four BRS licenses).

The Commission similarly did not assess AT&T's acquisition of Cingular's spectrum rights in its review of the AT&T/BellSouth merger because AT&T already held an attributable interest in Cingular's spectrum holdings. *See* Applicants' Joint Opposition to Petitions to Deny at 25-27. Although the Commission reviewed issues raised by the aggregation of certain Wireless Communications Service and BRS licenses in that proceeding, it undertook that review only because those licenses were held separately by BellSouth and AT&T. *AT&T Inc. and BellSouth Corporation; Application for Transfer of Control*, Memorandum Opinion and Order, 22 FCC Rcd 5662, ¶¶ 14, 177 n. 474 (2007).

Reply of Crest at 9-15 (filed Feb. 25, 2013) ("Crest Reply"); DISH Reply at 11-20; Consolidated Reply to Oppositions of Consortium at 2-15 (filed Feb. 25, 2013).

Policies Regarding Mobile Spectrum Holdings, Notice of Proposed Rulemaking, 27 FCC Rcd 11710 (2012). See also Applicants' Joint Opposition to Petitions to Deny at 28-32; Applicants' Joint Reply to Comments at 3-5 (filed Feb. 25, 2013).

DISH Reply at 33-34. This argument also is procedurally improper because it cannot be raised for the first time on reply.

Commission to engage in such an inquiry, as it has deferred to Team Telecom and, as appropriate, the Committee on Foreign Investment in the United States, in every previous transaction.¹⁵

Extraneous Issues Asserted by Petitioners

Many of the issues asserted in the petitions and some of the comments are either non-transaction specific, such as individual intercarrier compensation disputes, or are beyond the Commission's jurisdiction, such as minority shareholder litigation. Some parties seek to introduce additional extraneous matters in their reply comments, including in the reply comments filed by Crest¹⁶ and the Consortium.¹⁷ As the Applicants explained in their Opposition, the Commission should reject these efforts to convert its merger review process into a forum for addressing irrelevant private disputes.

Finally, DISH's unsolicited, non-binding proposal to acquire Clearwire's outstanding shares provides no grounds for the Commission to delay its consideration of the transactions before it. Unlike DISH's proposal, the pending applications reflect binding and definitive agreements. While a Special Committee of Clearwire's Board of Directors is continuing to evaluate DISH's proposal pursuant to its fiduciary duties, that proposal is only a preliminary

See, e.g., Applications filed by Global Crossing Limited and Level 3 Communications, Inc. for Consent to Transfer Control, 26 FCC Rcd 14056, ¶ 63 (2011) (noting that the Commission will "accord deference to Executive Branch expertise on national security and law enforcement issues") (footnote omitted).

For example, Crest makes a series of false assertions about the information Applicants' provided concerning Sprint's intentions for negotiating a transaction with Clearwire. Crest Reply at 24-30. Crest's assertions are refuted by the comprehensive description of the SoftBank/Sprint and the Sprint/Clearwire transactions set forth in the preliminary proxy statements Sprint and Clearwire have filed with the SEC, and by the SoftBank-Sprint transaction documents, which clearly contemplate that the SoftBank-Sprint transaction is not dependent on Sprint obtaining full control of Clearwire. See Clearwire, Preliminary Proxy Statement (Form PREM14A), at 29-30 (Feb. 1, 2013), http://corporate.clearwire.com/secfiling.cfm?filingID=1193125-13-33200&CIK=1442505 ("Clearwire Preliminary Proxy Statement"); Sprint Proxy Statement, included in Starburst II, Inc., Registration Statement (Form S-4), at 79-85 (Feb. 4, 2013), http://www.sec.gov/Archives/edgar/data/1560158/000119312513036887/d425100ds4.htm. In any event, Crest's

http://www.sec.gov/Archives/edgar/data/1560158/000119312513036887/d425100ds4.htm. In any event, Crest's assertions are irrelevant to the Commission's public interest analysis.

The Consortium reply comments raise various claims regarding the negotiation of EBS spectrum leases with Clearwire, yet the Consortium fails to provide any credible connection between these claims and the Commission's review of the merger transactions at issue in the instant proceeding. The Consortium's arguments come nowhere close to raising a valid issue regarding Clearwire's qualifications to hold FCC licenses. *See, e.g., Applications of NYNEX Corp. and Bell Atl. Corp. for Consent to Transfer Control of NYNEX Corp. and Its Subsidiaries,* Memorandum Opinion and Order, 12 FCC Rcd 19985, ¶ 236 (1997). To the contrary, nine parties, representing hundreds of EBS licensees, have filed comments showing that Clearwire's lease arrangements have benefitted the EBS community and advanced its educational mission. *See* Comments on Petition to Deny of Five EBS Licensees (filed Feb. 12, 2013), Comments of Hispanic Information and Telecommunications Network, Inc. (filed Feb. 12, 2013), Opposition of Clarendon Foundation, Inc. (filed Feb. 12, 2013), Opposition of EBS Parties (filed Feb. 12, 2013), Opposition of School Board of Pinellas County, Florida (filed Feb. 12, 2013), Opposition of Tarrant County College (filed Feb. 12, 2013), Opposition to Petition to Deny of The Source for Learning, Inc. (filed Feb. 12, 2013), Opposition to Petition to Deny of North American Catholic Educational Programming Foundation, Inc. (filed Mar. 1, 2013).

indication of interest and is subject to numerous, material uncertainties and conditions. ¹⁸ Notwithstanding DISH's preliminary indication of interest, the Special Committee has not made any determination to change its recommendation that the Clearwire Board approve the merger with Sprint. ¹⁹

As the Applicants have demonstrated in their Opposition to DISH's Request to Hold Proceeding in Abeyance, ²⁰ the Commission consistently rejects arguments that a license transfer should be denied or delayed because a third party alleges that it has made a better offer to buy the licensee. The Commission has found that entertaining such counteroffers would violate the statutory prohibition against the Commission considering "whether the public interest, convenience and necessity may be served by the transfer, assignment, or disposal of the permit or license to a person other than the proposed transferee or assignee." Delaying action on the pending applications also would represent a marked departure from the Commission's position of neutrality in corporate takeover disputes^{22/} by treating the non-binding DISH proposal as equivalent to the definitive agreement between Clearwire and Sprint. Further, and as Clearwire indicated during the meeting, Clearwire agrees with the Applicants that the Commission should not delay action on the pending applications before it.

* * * * * *

The SoftBank/Sprint and Sprint/Clearwire transactions promise substantial public interest benefits with no countervailing public interest harms. The Commission should grant the amended applications filed in this proceeding expeditiously and without conditions.

Clearwire Press Release, Clearwire Corporation Provides Transaction Update (Jan. 8, 2013), available at: http://corporate.clearwire.com/releasedetail.cfm? ReleaseID=732316. Among the conditions are DISH: (i) acquiring no less than 25% of the fully-diluted shares of Clearwire, (ii) being granted the right to designate Clearwire board members commensurate with its pro forma ownership percentage, (iii) receiving certain minority protections, including the right to approve material changes to Clearwire's organizational documents, change of control and material transactions with related parties and (iv) receiving preemptive rights. *Id*.

^{19/} Clearwire Preliminary Proxy Statement at 35.

Applicants' Opposition to Request to Hold Proceeding in Abeyance, (filed Jan. 23, 2013).

²¹ 47 U.S.C. § 310(d).

See, e.g., Tender Offers and Proxy Contests, Policy Statement, 59 Rad. Reg. 2d (P & F) 1536 (1986).

Pursuant to the Commission's rules,²³ this letter is being submitted for inclusion in the public record of the above-referenced proceedings and copies are being provided to the Commission participants in the March 8 meeting.

Respectfully submitted,

SPRINT NEXTEL CORPORATION

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Exhibit 1

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